

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

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LAURA FARRELL,)
Plaintiff,)
v.) Case No. 5:10-cv-284
MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
Defendant.)

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

(Docs. 5, 9 & 16)

This matter came before the court for a review of the Magistrate Judge's November 23, 2011 Report and Recommendation ("R & R") in the above-captioned matter (Doc. 16). Neither party has objected to the R & R, and the deadline for doing so has expired.

In this action, pursuant to 42 U.S.C. § 405(g), Plaintiff Laura Farrell seeks review of the decision of the Commissioner of Social Security (the "Commissioner") denying her application for disability insurance benefits. In the R & R, the Magistrate Judge recommends granting in part Ms. Farrell's motion to reverse the Commissioner's decision (Doc. 5) and denying the Commissioner's motion to affirm the same (Doc. 9).

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual

or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See *Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his twenty page R & R, the Magistrate Judge carefully reviewed the factual record and the competing motions and determined that Administrative Law Judge (“ALJ”) Robert Klingebiel erred in adjudicating Laura Farrell’s claim for disability benefits by employing the wrong standard to determine whether Ms. Farrell’s fibromyalgia is severe and by failing to consider its impact in a residual functional capacity analysis. The Magistrate Judge recommended affirming all other aspects of the ALJ’s decision. Specifically, he recommended that the court reject Ms. Farrell’s challenges and affirm: (1) the ALJ’s conclusions with regard to Ms. Farrell’s Irritable Bowel Syndrome; (2) the ALJ’s determination of Ms. Farrell’s credibility; (3) the ALJ’s analysis of Ms. Farrell’s chiropractor’s opinion; and (4) the ALJ’s conclusion that Ms. Farrell’s impairments did not meet or medically equal an impairment identified in the Listings.

The court agrees with the Magistrate Judge’s conclusions and hereby ADOPTS the R & R as the Opinion and Order of this court. This case is therefore remanded for a redetermination of Ms. Farrell’s disability benefits application consistent with the rulings set forth herein.

For the foregoing reasons, the court hereby GRANTS IN PART AND DENIES IN PART Ms. Farrell’s motion to reverse (Doc. 5), DENIES the Commissioner’s motion for an order affirming the ALJ’s decision (Doc. 9) and REMANDS this case for proceedings consistent with this Opinion and Order.

SO ORDERED.

Dated at Rutland, in the District of Vermont, this 3rd day of January, 2012.



Christina Reiss, Chief Judge
United States District Court